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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

LAWRENCE RIVERA,

Petitioner,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

E066692

(Super.Ct.Nos. WHCJS15000282 &
FBA006835)

OPINION

ORIGINAL PROCEEDING; petition for writ of mandate. Katrina West and Kyle S. Brodie, Judges. Petition granted.

Katrina West for Respondent.

No appearance for Real Party in Interest.

In this matter we reviewed the petition, concluded it appeared to have merit, and requested an informal response from respondent (the trial court). Having now read the

response, we have concluded that a writ should issue for the reasons set forth below.

Because resolution of the matter involves the application of settled principles of law, and because the equities favor petitioners, issuance of a peremptory writ in the first instance is appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

DISCUSSION

Petitioner filed a petition for habeas corpus in the trial court on August 10, 2015. This created an obligation on the trial court's part to rule on the petition within 60 days. (Cal. Rules of Court, rule 4.551(a)(3)(A).)

Petitioner asserts the case was initially assigned to Judge Katrina West, but it was then reassigned to Judge Kyle S. Brodie "in order to balance the work of the court." On October 28, 2015 (79 days after the petition was filed), Judge Brodie issued an order extending the trial court's time to rule on the petition until December 1, 2015.

While a court may extend the time to rule on a petition for habeas corpus, it may only do so "for good cause stated in the order." (Cal. Rules of Court, rule 4.551(h).) The record on this petition does not show what reasons, if any, Judge Brodie gave for the extension of time, or whether he issued an order stating "good cause."

Petitioner sought leave to file an amended petition for habeas corpus on November 9, 2015. Judge Brodie granted the request on December 16, 2015, and the amended petition, which the court had already received, was filed the next day. On December 16, 2015, Judge Brodie also extended the trial court's time to respond until January 19, 2016.

While we understand the trial court may have needed some time to adjust to new issues raised in the amended petition, the record again discloses no reasons for the extension.

The same is true of the trial court's next order on the habeas petition before it. From the response, we know that on January 19, 2016, Judge Brodie extended the trial court's time to rule on the petition from January 20, 2016, to March 1, 2016. What we do not know is why the trial court needed another month to rule on the petition.

On March 10, 2016, petitioner filed a "Notice and Request for Ruling," as is authorized when a trial court fails to rule on a petition for habeas corpus within 60 days. (Cal. Rules of Court, rule 4.551(a)(3)(B).) Upon receiving a notice and request for ruling in a habeas corpus proceeding, "[i]f the presiding judge or his or her designee determines that the notice is complete and the court has failed to rule, the presiding judge or his or her designee must assign the petition to a judge and calendar the matter for a decision without appearances within 30 days of the filing of the notice and request for ruling. If the judge assigned by the presiding judge rules on the petition before the date the petition is calendared for decision, the matter may be taken off calendar." (Cal. Rules of Court, rule 4.551(a)(3)(B)(ii).)

Instead, this case proceeded as follows: On March 14, 2016, Judge Brodie issued an order requesting an informal response from real party in interest by April 22, 2016. On April 4, 2016, Judge Brodie issued a "finding" stating he had issued the March 14, 2016 order requesting an informal response before he received petitioner's March 10, 2016 notice and request for ruling, such that he deemed the earlier-filed document moot.

The trial court's response offers no explanation for why Judge Brodie had no knowledge of the March 10, 2016 notice and request for ruling when he made the March 14, 2016 order requesting an informal response.

The March 14, 2016 order requesting an informal response constituted a ruling on the petition for purposes of the rule that, "[t]he court must rule on a petition for writ of habeas corpus within 60 days after the petition is filed." (Cal. Rules of Court, rule 4.551(a)(3)(A); see Cal. Rules of Court, rule 4.551(a)(4)(C).) We note, however, that ordinarily "[t]he informal response . . . must be served and filed within 15 days." (Cal. Rules of Court, rule 4.551(b)(2).) Here, the trial court gave real party in interest 39 days in which to respond without, as far as our record discloses, explanation for the discrepancy.

Once the trial ordered an informal response, it acquired a new deadline for either issuing an order to show cause or denying the petition: 45 days from receipt of the informal response. (Cal. Rules of Court, rule 4.551(a)(5).) Allowing five days for service of the order requesting an informal response and 15 days to file the informal response, as envisioned by the California Rules of Court, this window of time should have closed on May 18, 2016. However, two additional issues arose, causing yet more delay.

First, service issues occurred. Judge Brodie's June 15, 2016 order admitted that "the Court's initial order requesting an informal response went missing, which led the Court to reissue it. It appears the reissued order may have also not been served on

respondent.” Consequently, Judge Brodie instructed the clerk of court to serve both the June 15, 2016 order and a copy of the March 14, 2016 order requesting a response on real party in interest; ordered real party in interest both to confirm its receipt of the order requesting a response in writing and to file the informal response by July 11, 2016; and extended the trial court’s deadline to issue a ruling on the petition to August 9, 2016. No reason was given for the extension other than, presumably, the aforementioned service difficulties.

Second, Judge Brodie’s June 15, 2016 order reassigned the case to Judge West because having the matter in his courtroom “ha[d] exacted a significant administrative cost on the Court, and ha[d] hindered, rather than facilitated, bringing the petition to a resolution.” Judge Brodie’s order made no mention of the fact that this case had originated in Judge West’s courtroom but had been transferred for administrative convenience. Rather, he asserted that his “daily calendar involve[d] handling probate matters, conservatorships, guardianships, and elder abuse protective orders,” and that Judge West’s “department is administratively well-suited to process writs in a timely manner, and is the appropriate department to hear petitioner’s case.” This reassignment came 310 days after the petition was filed, 231 days after Judge Brodie first extended the trial court’s time to rule on the petition on October 28, 2015, and 181 days after the amended petition was filed. The reassignment order expressed a hope that there would be no more “delay [in] giving Petitioner the ruling to which he is entitled,” but that did not come to pass as described below.

On June 21, 2016, real party in interest acknowledged receipt of the order requesting an informal response in the trial court. That left 20 days, or five more than provided by the California Rules of Court, for real party in interest to respond by its new deadline of July 11, 2016.

Meanwhile, on May 3, 2016, petitioner filed a “request for judicial notice” that he had not received an informal response. This document also requested a ruling on the habeas petition. When no response came, petitioner filed a petition for writ of mandate in this court; while we summarily denied the petition on July 6, 2016, our order added: “The trial court is reminded of its obligation to expeditiously rule on petitions for habeas corpus. (Cal. Rules of Court, rule 4.551(a)(3).)”

On July 8, 2016, real party in interest requested an extension of the time in which to file the informal response. The deputy district attorney assigned to the habeas petition submitted a declaration attesting that he had just received the file, that the petition was 121 pages long with 14 pages of exhibits, that he needed additional time to obtain portions of the record, and that work on an informal response in another case had interfered with his ability to devote sufficient time to petitioner’s case. Real party in interest requested an additional five weeks, or until August 15, 2016.

The trial court granted the extension as requested on July 15, 2016. This was both four days after the informal response was due and nine days after our reminder that habeas petitions are to be expeditiously processed.

On August 15, 2016, the date the informal response was due after the first extension, real party in interest requested another extension of time in which to file the informal response. This time, the same deputy district attorney who wrote the declaration in support of the earlier request for additional time, stated he had been busy preparing a supplemental informal response and a return in two cases other than the one he had mentioned in his previous declaration; that he had been “assisting” in a previously unmentioned capital case; and that he would be on vacation from August 19, 2016, through August 31, 2016.

On August 16, 2016, the trial court, now more than a month into its warning from us to expedite this case, granted an extension of time until September 19, 2016, as real party in interest had requested. The minute order granting real party in interest’s request gives no reason for the extension. (Cal. Rules of Court, rule 4.551(h) [allowing extensions of time only for “good cause stated in the order”].)

Petitioner filed this petition for writ of mandate in this court on August 25, 2016. On September 14, 2016, we reminded the trial court of our previous warning that it must “expeditiously rule on petitions for habeas corpus” and requested a response by September 26, 2016.

On September 29, 2016, the trial court filed a declaration from Judge West. That declaration largely attests to the procedural history summarized above. It also notes that real party in interest filed its informal response on September 19, 2016. Judge West’s declaration in response then asserts—correctly—that the trial court now has until

November 3, 2016,¹ or 45 days from the date the response was filed, to issue an order to show cause or deny the petition. (Cal. Rules of Court, rule 4.551(a)(5).)

What the response does not do is promise compliance with the November 3, 2016 deadline about which we and the trial court agree. In addition, the procedural history we provided above shows the handling of this case has been suboptimal so far. We understand that this particular habeas petition contains more handwritten pages and a larger record than most, but petitioner is nonetheless entitled to an answer. To ensure he receives one, we issue a peremptory writ in the first instance ordering the trial court to “issue an order to show cause or deny the petition” by November 3, 2016. (Cal. Rules of Court, rule 4.551(a)(5).)

DISPOSITION

Let a peremptory writ of mandate issue, directing the Superior Court of San Bernardino County to either issue an order to show cause or deny the petition for habeas corpus that is still pending there. We remind the court that it “must issue an order to show cause if the petitioner has made a prima facie showing that he or she is entitled to relief.” (Cal. Rules of Court, rule 4.551(c)(1).)

¹ This date will be 451 days from the filing of the petition and 322 days from the filing of the amended petition.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties. Petitioner is to recover his costs.

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SLOUGH
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.